Supreme Court, U. S.
FILED
NOV 28 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-639

LOUIS A. GENTILE, ET ALS.,

Appellants,

v.

PAUL B. ALTERMATT, ET ALS.,

Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF CONNECTICUT

MOTION TO AFFIRM OR, IN THE ALTERNATIVE, TO DISMISS

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Appellees The Aetna Casualty and Surety Company, Allstate Insurance Company, Covenant Insurance Company, Hartford Accident and Indemnity Company, Liberty Mutual Fire Insurance Company, Lumbermen's Mutual Casualty Company, Nationwide Mutual Insurance Company and The Travelers Indemnity Company pursuant to Rule 16(1)(c) and (d) of the Rules of the Supreme Court of the United States move that the final judgment of the Supreme Court of Connecticut be affirmed on the grounds that the questions on which the decision of the cause de-

pends are so unsubstantial as not to need further argument and that the decision of the Supreme Court of Connecticut is so obviously correct under principles of law heretofore enunciated by this Court that no further review by this Court is warranted. In the alternative, said appellees pursuant to Rule 16(1)(b) move that the appeal from said judgment be dismissed on the grounds that it does not present a substantial federal question and that the judgment rests on an adequate non-federal basis.

Opinion Below

The memorandum opinion and judgment of the Supreme Court of Connecticut are set forth in the Appendix of appellant's Jurisdictional Statement (hereinafter "Appendix").

Jurisdiction

The jurisdiction of this Court has been invoked by appellants under 28 U.S.C. § 1257(2).

Questions Presented

Whether Connecticut General Statutes §§ 38-323, 38-327(a), (d), and (e), and 14-112 violate the equal protection and due process guarantees of the 14th amendment of the United States Constitution, and, so far as § 14-112 is concerned, the Fifth Amendment guarantees against self-incrimination as well.

Statutory Provisions Involved

The statute under consideration is 1972 Public Act No. 273, now codified as Connecticut General Statutes Chapter 690, §§ 38-319 through 38-351a. This statute is fully

analyzed and summarized in the opinion of the Supreme Court of Connecticut set forth in appellant's Appendix. Within that statute appellant attacks only § 38-323, and § 38-327(a), (d), and (e). In addition, appellant purports to attack Connecticut General Statutes § 14-112, when read in conjunction with § 38-327(d), § 14-108 and § 14-116. These specific sections are set forth in Appendix B of appellant's Jurisdictional Statement.

Argument

A. The attack on § 38-323

On its face, appellant's Jurisdictional Statement discloses that the heart of its challenge to Connecticut's no-fault automobile reparations law is grounded on *state* constitutional principles, *not federal* constitutional guarantees, and that those state constitutional principles have been found by Connecticut's Supreme Court amply to support the statute in question. As the Court below noted in its opinion, the fact that there existed in the State of Connecticut a cause of action in negligence by victims of automobile accidents is an historical outgrowth of two uniquely state factors: (1) the fact that early in the development of Connecticut's system of jurisprudence it adopted from the English common law the action of trespass on the case which, the Court below held, was the foundation of the automobile accident victim's cause of action, and (2) the fact that when Connecticut adopted its first constitution in 1818, that state constitution recognized all existing rights—including the action for trespass on the case—and permitted the legislature to restrict or abolish those rights only on providing reasonable alternatives to the enforcement of those rights (Appendix, pages 16A-19A). The Court below went on to find a reasonable alternative to this cause of action to have been provided by the no-fault statute in question.

Appellants themselves recognize that the source of their claimed cause of action for automobile accident victims derives, if at all, from the Connecticut *state* constitution rather than from the federal (cf. Jurisdictional Statement, page 3, question no. 4 and page 7). Likewise, appellants recognize that their right, if any, to a jury trial on that cause of action derives from provisions of the Connecticut *state* constitution, rather than from the federal (cf. Jurisdictional Statement page 14, last paragraph). And as Connecticut's highest court has interpreted Connecticut's constitutional provision, that right to a jury trial has not been abridged by this statute, since those entitled to maintain the cause of action are still entitled to trial by jury. All the statute was held to have done was to restrict the standing to institute the action to those who had not received the benefits of the reasonable alternative to that action—no-fault insurance—provided by the legislature (Appendix, pages 30A-31A). Thus, to the extent that appellants ground their objections to § 38-323 on the claimed abolition of a constitutionally-guaranteed right either to a cause of action or to a jury trial, appellants concede and appellees agree that the constitution that guaranteed those rights was Connecticut's *state* constitution, and Connecticut's highest court has found those guarantees not to be violated by the statute in question.

Appellants complain that victims of private passenger motor vehicle accidents are by virtue of the statute treated differently from victims of other tortious acts, allegedly in violation of the due process and equal protection clauses of the Fourteenth Amendment. Treating different types of problems in different ways is a legitimate exercise of the legislative power, however. And this Court, in upholding Connecticut's automobile guest statute, as early as almost a half century ago clearly recognized that there are valid, legally cognizable differences between private passenger motor vehicles on the one hand and other types of motor vehicles—not to mention other types of non-motor vehicle

torts—on the other hand that make constitutionally permissible different legislative treatment of torts arising out of the use of private passenger motor vehicles. Its discussion in *Silver* v. *Silver*, 280 U.S. 117, 122-124 (1929), bears extended quotation here because of its almost prescient pertinence to the no-fault statute under consideration in the case at bar:

> As the record does not disclose the constitutional grounds on which the appellant challenged the validity of the statute, our review will be limited to the single question arising under the Federal Constitution which was considered in the opinion of the court below. *Saltonstall* v. *Saltonstall*, 276 U.S. 260. We need not, therefore, elaborate the rule that the Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object. See *Louis Pizitz Dry Goods Co.* v. *Yeldell*, 274 U.S. 112, 116; *New York Central R. Co.* v. *White*, 243 U.S. 188; *Mountain Timber Co.* v. *Washington*, 243 U.S. 219; *Wilmington Mining Co.* v. *Fulton*, 205 U.S. 60, 74.
>
> The use of the automobile as an instrument of transportation is peculiarly the subject of regulation. We cannot assume that there are no evils to be corrected or permissible social objects to be gained by the present statute. We are not unaware of the increasing frequency of litigation in which passengers carried gratuitously in automobiles, often casual guests or licensees, have sought the recovery of large sums for injuries alleged to have been due to negligent operation. In some jurisdictions it has been judicially determined that a lower standard of care should be exacted where the carriage in any type of vehicle is gratuitous. See *Massaletti* v. *Fitzroy*, 228 Mass. 487; *Marcienowski* v. *Sanders*, 252 Mass. 65; *Epps* v. *Parrish*, 26 Ga. App. 399. Whether there has been a serious increase in the evils of vexatious litiga-

tion in this class of cases, where the carriage is by automobile, is for legislative determination and, if found, may well be the basis of legislative action further restricting the liability. Its wisdom is not the concern of courts.

It is said that the vice in the statute is not that it distinguishes between passengers who pay and those who do not, but between gratuitous passengers in automobiles and those in other classes of vehicles. But it is not so evident that no grounds exist for the distinction that we can say *a priori* that the classification is one forbidden as without basis, and arbitrary. See *Clarke* v. *Deckeback,* 274 U. S. 392, 297.

Granted that the liability to be imposed upon those who operate any kind of vehicle for the benefit of a mere guest or licensee is an appropriate subject of legislative restriction, there is no constitutional requirement that a regulation, in other respects permissible, must reach every class to which it might be applied—that the legislature must be held rigidly to the choice of regulating all or none. *Patsone* v. *Pennsylvania,* 232 U.S. 138, 144; *Miller* v. *Wilson,* 236 U.S. 373, 383, 384; *International Harvester Co.* v. *Missouri,* 234 U.S. 199, 215; *Barrett* v. *Indiana,* 229 U.S. 26, 29 (1913). In this day of almost universal highway transportation by motor car, we cannot say that abuses originating in the multiplicity of suits growing out of the gratuitous carriage of passengers in automobiles do not present so conspicuous an example of what the legislature may regard as an evil, as to justify legislation aimed at it, even though some abuses may not be hit. *Carroll* v. *Greenwich Ins. Co.,* 199, U.S. 401, 411; *Bryant* v. *Zimmerman,* 278 U.S. 63, 73. It is enough that the present statute strikes at the evil where it is felt and reaches the class of cases where it most frequently occurs.

Id., at 122-124

In so holding this Court was but applying the traditional principles of constitutional review of challenged state legislation stated by this Court recently again in *McDonald* v. *Board of Election Commissioners,* 394 U.S. 802, 808-809 (1969):

> Though the wide leeway allowed the States by the Fourteenth Amendment to enact legislation that appears to affect similarly situated people differently, and the presumption of statutory validity that adheres thereto, admit of no settled formula, some basic guidelines have been firmly fixed. The distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal. Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them. See *McGowan* v. *Maryland,* 366 U.S. 420 (1961); *Kotch* v. *Board of River Port Pilot Commissioners,* 330 U. S. 552 (1947); *Lindsley* v. *Natural Carbonic Gas Company,* 220 U.S. 61 (1911). With this much discretion, a legislature traditionally has been allowed to take reform "one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind," *Williamson* v. *Lee Optical of Oklahoma, Inc.,* 348 U.S. 483, 489 (1955); and a legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked. See *Ozan Lumber Co.* v. *Union County National Bank,* 207 U.S. 251 (1907).

No topic of recent state legislative attention has been the subject of such searching scrutiny, such decades-long

study, such spirited debate, and such slow gestation as has the no-fault automobile reparations statute, both in Connecticut and in the other 25 or so states of the Union which have adopted such legislation in one form or another. From the earliest suggestions over 40 years ago at Columbia University, through years of study, through the seminal 1965 work by Professors Keeton and O'Connell, through the compendious multi-volume study conducted by the Federal Department of Transportation, through the extensive subsequent studies of the specially-created Connecticut Commission to Study a State Program of Restricted Motor Vehicle Insurance, through lengthy public and legislative hearings and debates, through the ultimate enactment and signing of 1972 Public Act No. 273—a history fully considered and discussed by the court below in its opinion (Appendix, pages 20A-23A)—the progress of this statute through the forum of public debate and the long legislative process has been a veritable model of American democracy—an informed, alert, fully-ventilating, robustly-debating American democracy—legislating social and economic legislation for the advancement of the common good. The wisdom or unwisdom of this legislation, no province of the courts, has been as fully debated and considered in the legislative halls and public forums designed by the Constitution for that purpose as has that of any legislation enacted in recent memory.

That history and process, coupled with the DOT study and State Commission reports which comprised stipulated exhibits in the record below and were before the Court for its consideration, were coupled with yet other facts before the Court, stipulated by the parties, for its consideration of the rationality of the legislature's different treatment of private passenger motor vehicle victims, and its decision at this time to afford to them alone the benefits of no-fault reparations benefits. These included the facts that in 1972 there were 1,441,633 private passenger motor vehicles—those covered by the Act—registered in Con-

necticut, as contrasted as to only 129,659 commercial vehicles and 208,935 "other vehicles" (the comparable figures for 1973 were 1,500,830; 129,464; and 225,436); and that at year-end 1972 there were 1,713,850 private passenger motor vehicle drivers' licenses in effect (the comparable figure for 1973 was 1,728,184); and that in 1971 there were 79,702 traffic accidents in Connecticut resulting in injury to 34,665 people and 490 traffic fatalities; and that the total number of persons whose motor vehicle licenses were under suspension as of February 27, 1974 was 85,149.

Thus, the Court below had before it telling, irrefutable evidence—evidence stipulated to by all the parties to this action—supporting the rationality at this time of treating private passenger motor vehicle accident victims differently from victims of other motor vehicle accidents and other tort victims, and of devising a means of affording them at this time prompt, certain, and full payment of all the costs incurred by them without the uncertainties of the adversary system in negligence actions, the law's delays of perhaps a half decade before trial, and the need during that extended period to bear all expenses out of their own pockets, with no guarantee that any part would ever be recovered or recoverable. For this is what the statute provided as an alternative—a reasonable alternative—to the previous remedy in tort for those with expenses under the $400 threshold *and* who have not suffered death, permanent injury, fracture of any bone, permanent significant disfigurement, permanent loss of any bodily function or loss of a body member.

Appellants decry that what they estimate to be 87% of all private passenger motor vehicle accident victims have lost the right to sue. The legislature—and, it is submitted, the victims—view the matter from a different perspective. For them, 87% of private passenger motor vehicle accident victims have been provided the *certainty* that medical care bills, loss of income and expenses incurred in obtaining ordinary and necessary substitute

services *will be paid* (§ 38-319), that they will be paid as these expenses and losses are incurred and usually no later than 15 days after proof of loss is submitted (§ 38-333), and that at a minimum these expenses will be paid up to $5,000 (§ 38-320), with an option that the limits on the available insurance may well be higher (§ 38-330). Thus, those with medical care expenses less than $400 in reasonable value and without the prescribed injuries are guaranteed that *without* the expense and delay and bother of instituting suit, and *without* incurring the burden of proving fault, and *without* the uncertainty as to whether a judge or jury will believe their story or the defendant's, and *without* the many years of litigation during which out-of-pocket expenses must be borne without reimbursement in the hope that someday some jury may believe their story or that the case may be settled on the courthouse steps for some sum of money (less costs and attorneys' fees)—without all of these expenses and delays and uncertainties and privations, they will be made whole for their economic loss automatically, immediately, as the loss is incurred, and up to a guaranteed minimum of $5,000. And this, the Court below has found and this Court should affirm, is clearly a reasonable alternative to, and a more than adequate substitute for, the right to sue in tort.

And so it has been found to be by the Supreme Courts of four states—*Lasky* v. *State Farm Insurance Company,* 296 So. 2d 9 (Florida); *Manzanares* v. *Bell,* 214 Kan. 589, 522 P. 2d 1291 (Kansas); *Pinnick* v. *Cleary,* 360 Mass. 1, 271 N.E. 2d 592 (Massachusetts); *Opinion of the Justices,* 113 N.H. 205, 304 A. 2d 881 (New Hampshire); and, as this brief is being printed, so has the New York Court of Appeals. Only in Illinois did the Supreme Court invalidate a no-fault statute. *Grace* v. *Howlett,* 51 Ill. 2d 478, 283 N.E. 2d 474. And it is significant that in *Grace,* the Illinois Supreme Court rested its decision not on the federal Constitution, but on two provisions of the Illinois *state* constitution unique to that constitution and found neither in the federal constitution nor in the Connecticut constitution.

Appellants urge this Court to ignore the analogy to workmen's compensation laws and their constitutionality, held by this Court in *New York Central Railroad Company* v. *White,* 243 U.S. 188 (1917) and cited with approval by the Court below and by all four state Supreme Courts upholding no-fault statutes. Appellants note, and claim significance for, the fact that the New York State Constitution had been amended to permit workmen's compensation legislation of the sort under consideration by this Court in *White.* That fact is, however, without significance in the case at bar where appellants claim the protection of *federal* constitutional guarantees. *White* found the workmen's compensation statute constitutional under the *federal* constitution, and it was irrelevant to that determination that it was also valid under the New York *state* constitution; indeed, had it not passed *state* constitutional muster, it doubtless would never have reached this Court on appeal by plaintiffs in the first place.

Appellants next seek to distinguish the incidents of workmen's compensation legislation from those of no-fault to show that *White* and its progeny do not afford the ample precedents for constitutionality that state Supreme Courts considering no-fault legislation have heretofore universally found in them. They claim that Connnecticut's Workmen's Compensation Act is elective, rather than mandatory, and rely for that proposition on the Connecticut Supreme Court decision in *Powers* v. *Hotel Bond Company,* 89 Conn. 143, 93 A. 245 (1915). Despite the fact that appellants seek to tie that case to the *current* definitions section of Connecticut's Workmen's Compensation statute, General Statutes § 31-275, the simple fact of the matter is that *Powers* was considering the original 1913 version of the Act, and the Act has been considerably changed since then. The current provision of Connecticut's Workmen's Compensation Act, General Statutes § 31-284, is *mandatory* and requires the employer to secure compensation to employees covered by the Act. Each employer who does not

furnish to the Compensation Commissioner satisfactory proof of his solvency and financial ability to pay back directly to injured employees or other beneficiaries the compensation provided by the Act must insure his full liability in one of the following ways: (1) by filing with the Insurance Commissioner security guaranteeing the performance by the employer of his obligations under the Act; or (2) by insuring his full liability under the Act in stock or mutual companies or associations authorized to take such risks in Connecticut; or (3) by such a combination of the two aforesaid methods as the employer may choose subject to the approval of the Insurance Commissioner. Furthermore, the Act abolishes all rights and claims between the employer on the one hand and the employee or any representative or dependents of the employee on the other hand arising out of personal injury or death sustained in the course of employment. While the act does permit the employee and employer to agree to substitute security, that substitute security must itself be approved by the Insurance Commissioner and must be at least equivalent to the benefits provided by the Workmen's Compensation law. Indeed, under the statute cited by appellants, § 31-275, the only persons as to whom this statute is elective and the only situation in which there is a full option to withdraw is in the case of employers and employees "excluded from the definition of employee" under the Act; and even in these situations, the statute provides that "all contracts of employment between an employer employing persons excluded from the definition of employee and any such employee shall be conclusively presumed" to contemplate the possibiilty of coverage at the option of the employer. As to employers and all employees as defined under the Act, they are bound by its terms and may not withdraw or elect to retain their common law rights.

In effect, then, the Connecticut statute and similar acts of other states deprive covered employees of the right

to sue their employers for common law negligence, while at the same time and in consideration for that deprivation guaranteeing them certain statutory sums from their employers in cases of personal injury arising out of and in the course of employment. Thus, the Connecticut statute and similar acts in other states limit the amounts recoverable to lesser sums than an employee might recover at common law, but make such amounts payable in every instance of work-connected injury, rather than in just those instances where an employee can prove breach of common law duty. *Bartolotta* v. *United States,* 276 F. Supp. 66 (D. Conn; 1967), affirmed, 411 F. 2d 115 (1969).

Thus it is that Connecticut's no-fault statute, like that of the other states adopting these statutes, closely parallel provisions long found constitutional in workmen's compensation statutes throughout the United States, both secure to injured parties certain, prompt and adequate compensation for injuries without the need to prove fault, both acts are mandatory, and both acts properly serve the remedial purposes for which they were enacted.

B. The attack on § 38-327

Appellants' attack on § 38-327(a) misstates the provisions of that section. Nowhere in that section—or in the statute itself—is there a requirement that private passenger motor vehicle owners purchase security from private insurance companies. The parties themselves stipulated, and the Court below so found (Appendix, pages 36A-37A), that owners are permitted under the statute to self-insure. Likewise, even if there were such a requirement, that requirement standing alone would not suffice to render the statute unconstitutional. Appellants argue that the insurance companies—presumably all 187 competitive insurance companies doing business in Connecticut—sell insurance pursuant to unregulated underwriting standards; and at page 15 of their Jurisdictional Statement

they allege that *these standards* violate the federal constitution. Putting aside the fact that the standards are not state statutes or governmental regulations or orders, the fact is (as found by the Court below, Appendix pages 35A-36A) that even prior to the enactment of the no-fault statute, the Connecticut legislature had established a medium for administrative and judicial review whereby any potential insured who feels himself aggrieved by the rates or underwriting policies of any insurer can secure a review of that claim by the company, by the insurance commissioner, and ultimately by the courts themselves. General Statutes § 38-208p.

And finally, again as the Court below found (Appendix, page 36A), anyone who is unable to purchase insurance from one of the 187 companies is guaranteed under state law the availability of the required insurance under Connecticut's assigned risk plan, known as the Connecticut Automobile Insurance Plan, established pursuant to General Statutes § 14-130, which requires each of the 187 insurance companies, in proportion to their automobile insurance writings in Connecticut, to insure the small number of applicants who are considered to be unreasonably high risk applicants. Indeed, the availability of insurance to all applicants through this plan is itself documented in the DOT study of assigned risk plans which specifically notes that Connecticut is one of only nine states whose assigned risk plans guarantee coverage to every licensed driver who continues to pay the premiums. The presence of the Insurance Commissioner of Connecticut as an ex officio member of the governing board of the Connecticut Automobile Insurance Plan further demonstrates the state's commitment to assure the availability of insurance at reasonable rates for all licensed applicants.

Likewise, appellants' attacks on §§ 38-327(d) and (e) are without foundation. Appellants complain as to (d) that only on private passenger motor vehicle owners are

criminal and administrative penalties and sanctions imposed for failure to provide security under the Act. Appellants do not complain about the amount or severity of those sanctions and penalties, but only about the fact that they are not imposed on non-private passenger motor vehicle owners. Since non-private passenger motor vehicle owners are *not* required to provide security under the Act, however, it would probably violate *their* federally guaranteed rights if they *were* subject to penalties and sanctions for failing so to provide. § 38-327(d) is a constitutionally legitimate provision to ensure compliance with the mandatory security provisions of the Act.

The imposition of personal liability up to $5,000 on private passenger motor vehicle owners who violate their statutory duty to provide basic reparations security as required by § 38-327(e) does no more than prevent an owner from escaping his responsibility under the Act. Under § 38-320 (see Appendix, page 5A), the basic reparations benefits the no-fault security must provide at a minimum is $5,000 per person payable to an injured person or, in the case of his death, to his survivors. Section 38-327(e) places the same responsibility, in the same and no higher amount, on each owner who fails to provide that benefit through the contemplated purchased security. If the Act's requirement that security be provided is constitutional, then the safeguard of § 38-327(e) is equally valid.

C. The attack on § 14-112

Finally, plaintiffs complain that § 38-327(d), which imposes criminal sanctions for failure to carry the required security, when combined with provisions under title 14 of the General Statutes for the reporting of motor vehicle accidents, results in infringement upon the rights guaranteed under the Fifth Amendment to the United States Constitution. The Supreme Court of Connecticut, however, in the opinion below, has clearly proscribed the use of

any signed statement by a motorist concerning his failure to carry the required security in either the investigation or prosecution of an individual under § 38-327(d) for failure to carry that security. Thus, the coexistence of §§ 14-108, 14-116, and 38-327(d) cannot offend the self-incrimination provisions of the Fifth Amendment. How § 14-112—which is the statute claimed in question no. 8 (Jurisdictional Statement, page 3) to offend the Fifth and Fourteenth Amendments—is constitutionally infirm is impossible to discern, because neither in their Jurisdictional Statement nor in the Court below have appellants adverted to it again. For their part, appellees are unable to detect even the suspicion of a constitutional question.

Conclusion

The discussion above clearly discloses that the opinion and judgment of the Supreme Court of Connecticut are amply supported by principles heretofore enunciated by this Court, that the appeal presents no substantial federal question, and that the judgment rests on an adequate non-federal basis.

Accordingly, the judgment below should be affirmed; or, in the alternative, the appeal should be dismissed.

Respectfully submitted,

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